IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.551 of 2006

Dhanakodi ... Petitioner

Vs.

1. Government of Tamilnadu, represented
Secretary, Public (L & O-F) Department,
Fort St. George, Chennai 600 009.

2. Commissioner of Police,
Greater Chennai, Egmore,
Chennai 600 008. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of Habeas Corpus to call for the records in Memo No.1/NSA/2005, dated 09.02.2006, on the file of the 2nd respondent, quash the same, direct the respondents to produce the body of the petitioner's son Saravanan @ Saravana Kumar, the detenu now confined in central Prison, Chennai, and set him at liberty.

For Petitioner : Mr.S.Sadasharam
For Respondents: Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor.

O R D E R

P.Sathasivam, J.

The petitioner herein challenges the impugned order of detention, dated 09.02.2006, passed by the second respondent/Commissioner of Police, Greater Chennai, detaining her son by name Saravanan @ Saravana Kumar under the National Security Act, 1980.

2. Heard Mr.S.Sadasharam, learned counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor.

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3. The incident, as could be seen from the complaint of one Abdul Rahman and which led to passing of the impugned detention order as against detenu Saravanan @ Saravana Kumar, is narrated hereunder.

On 27.01.2006 night, complainant Abdul Rahman came to Jumma Mosque at Padi to pay respect to one Peer Mohamed, who returned from Hajj. In the said mosque, number of muslims were also paying respect to the said Peer Mohamed. Abdul Rahman went to the toilet and was passing urine. At that time, the detenu, who was armed with sharp edged iron rod, stabbed Abdul Rahman with the said rod, whereupon, he raised hue and cry. Kaleel Rahman and Sadiq, who were returning from the said mosque, on hearing the voice of Abdul Rahman, came to his rescue. The detenu attacked them also with the sharp edged iron rod. At last, persons present in the vicinity apprehended the detenu and retrieved from him one big knife, one small knife, one iron-wire rope, one chilli powder pocket and five pages hand written papers containing messages promoting hatred and ill-will between Muslims and Hindus.

Complainant Abdul Rahman gave a statement to the police, T3 Korattur Police Station. The Sub Inspector of Police, Law and Order, received the said statement and registered a case in T3 Korattur Police Station Crime No.340/2006 under Sections 153(A) and 307 IPC. The Inspector of Police arrested the detenu, examined him and recorded his confession statement. Thereafter, he visited the spot, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements. The Inspector produced the accused/detenu before the Judicial Magistrate, Ambattur, Chennai, whereupon, he was remanded to judicial custody and lodged at Central Prison as remand prisoner till 10.02.2006.

Interrogation revealed that he got wrath against muslim community and he went to the extent of entering into the mosque with deadly weapons and assaulted the muslims who came for prayer and to pay respect to Hajj returned Peer Mohamed; thereby, he indulged in activities disturbing public order and created an atmosphere leading to communal clash. Further interrogation revealed that he was planning to paste pamphlets in walls and other important places where public gather and if the same is permitted to be pasted, it would definitely lead to eruption of communal clash. Investigation revealed that the scene of crime is a mosque, where considerable number of muslims used to pray and huge number of muslims are residing in the said area. Further investigation revealed that the said violent act of Saravanan @ Saravana Kumar would give rise to communal tension and there was every possibility of eruption of communal riot. Taking note of all these material aspects and in order to prevent him from indulging in such further activities in future, which are prejudicial to the maintenance of

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public order, the Detaining Authority/Commissioner of Police, Greater Chennai, detained him under the National Security Act, 1980.

4. Learned counsel for the petitioner, at the foremost, submitted that the detention order is liable to be quashed on the ground of non-application of mind on the part of the Detaining Authority. While elaborating the said contention, he adverted to the second paragraph of the detention order dated 09.02.2006 and pointed out that the Commissioner of Police, Grater Chennai, has relied on sub-Section(2) of Section-3 of the National Security Act and projected as if the said provision enables him to exercise the powers provided under the National Security Act. According to the counsel, the said provision enables only the Central or the State Government to exercise the powers provided thereunder and not the Commissioner of Police as stated.

We verified the second paragraph of the detention order, dated 09.02.2006, which reads as under:-

> " Now, therefore in exercise of the powers conferred on me by sub section (2) of Section 3 of the National Security Act, 1980 (Central Act 65 of 1980) read with orders issued by the Government in G.O.Ms.No.30, Public (L & O-F) Department dated 12th January 2006 under sub section (3) of Section 3 of the said Act, I hereby direct that Tr.Saravanan @ Saravana Kumar S/o (Late) Pandurangan be detained and kept in custody at the Central Prison, Chennai."

It is true that sub-section(2) of Section-3 of the National Security Act provides the Central Government or State Government with power to make detention orders under the Act if they are satisfied with respect to any person with a view to preventing him from acting in any manner prejudicial to the security of the State or for maintenance of public order or maintenance of supplies and services essential to the community. However, sub-Section(3) enables the State Government to authorise the District Magistrate or Commissioner of Police to exercise such power as provided in sub-Section(2). In view of the fact that the Detaining authority has referred to sub-Section(3) in the latter part of the said paragraph and that the State Government has also duly authorised the Commissioner of Police to exercise such power vide G.O. Ms. No.30, Public (L & O-F) Department, dated 12.01.2006, we are satisfied that there is no flaw or error in the impugned detention order passed by the Commissioner of Police, accordingly, we reject the said contention.

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5. Learned counsel for the petitioner next submitted that the order passed by the Detaining Authority has to be confirmed by the Government within 12 days and inasmuch as the said aspect has not been specifically stated so in the detention order, the same is liable to quashed.

We are not able to accept the said contention. As per sub-Section(4) of Section-3, any order passed by the District Magistrate or Commissioner of Police has to be approved by the State Government within 12 days, failing which, the order will have no force after 12 days. In the grounds of detention, in paragraph No.5, the same has been specifically stated and the detenu was informed that the detention order shall not remain in force for more than 12 days after making thereof unless, in the meantime, it has been approved by the Government. Inasmuch as the said aspect has been well reflected in the grounds of detention, we see no substance in the contention raised by the learned counsel for the petitioner.

6. Learned counsel for the petitioner further submitted that the order of approval by the Government was not communicated to the detenu. Learned Additional Public Prosecutor, by placing records, has brought to our notice that the order of approval was communicated to the detenu on 17.02.2006. Accordingly, we reject the said contention.

7. Learned counsel further submitted that the materials were not placed before the Advisory Board within the prescribed period of three weeks as provided under Section 10 of the Act.

Learned Additional Public Prosecutor has submitted that the entire materials were placed before the Advisory Board on 16.02.2006, which is within time and that the Advisory Board, after hearing the detenu and affording adequate opportunity, conveyed its opinion to the Government on 16.3.2006, which is also within time. Thus, we see no merit in the submission made by the learned counsel.

8. Learned counsel for the petitioner next submitted that the opinion of the Advisory Board was not informed to the detenu.

Learned Additional Public Prosecutor has brought to our notice that the detenu was intimated to appear before the Advisory Board on 07.03.2006; pursuant to the same, he appeared before the Board on 16.3.2006; he was heard, his representation was considered; and finally, the opinion of the Board was intimated to the detenu 11.04.2006. Thus, there is no flaw as claimed by the learned counsel for the petitioner.

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9. Learned counsel for the petitioner further contended that the confirmation order, dated 10.04.2006, of the State Government is belated.

Learned Additional Public Prosecutor pointed out that the opinion of the Board was conveyed to the Government on 16.3.2006 and, considering all the materials, the Government passed the confirmation order on 10.04.2006 which is within the prescribed period as provided under Section 14-A of the Act. Accordingly, we reject the contrary stand taken by the learned counsel for the petitioner.

10. Finally, learned counsel for the petitioner submitted that there was delay in disposal of the representation of the detenu dated 16.03.2006.

With reference to the same, learned Additional Public Prosecutor placed the particulars, which show that the representation, dated 16.3.2006, was received by the Government on 20.03.2006 and remarks were called for on the same day. The communication was received by the Collectorate on 21.03.2006, whereupon, remarks were called for from the Sponsoring Authority on the same day, received from the said authority on 22.3.2006, forwarded to the Government on 23.3.2006 and received by it on 24.03.2006. File was submitted on 24.3.2006 and dealt with by the Under Secretary and Additional Secretary on the same day. 25th and 26th of March, 2006 were holidays, being Saturday and Sunday. Deputy Secretary (Law) dealt with the File on 27.03.2006 and, finally, the Minister for Law & I.T. passed orders on 28.3.2006. Rejection letter was sent to the detenu on 29.03.2006 and served to him on the same day. The above details clearly show that there was no let up or delay at any stage and that, after getting necessary materials, ultimately, the representation was duly considered and disposed of without any delay. Accordingly, we reject the said contention also.

11. In the light of what is stated above, we do not find any error or infirmity or valid ground for interference. Habeas Corpus Petition fails and the same is dismissed.

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Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Government, Public (Law and Order-F) Department, Fort St. George, Chennai-600 009.

2. The Commissioner of Police, Greater Chennai, Chennai.

3. The Superintendent, Central Prison, Chennai.

4. The Public Prosecutor, High Court, Madras.

5. The Joint Secretary to Government, Public (Law and order) Department, Fort st. George, Chennai.

1 cc to Mr.S.Sadasharam, Advocate, sr. 45101

HCP No.551 of 2006.

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